FILED
SEP 9 1941
CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 597

COLLIN & GISSEL (Ludwig Baer),

Petitioner,

v.

THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS AND BRIEF IN SUPPORT THEREOF

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS.

Petition.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Collin & Gissel (Ludwig Baer), respectfully prays for a writ of certiorari directed to the United States Court of Customs and Patent Appeals to bring before this court for review the judgment of the United States Court of Customs and Patent Appeals dated June 9, 1941, in the case entitled "The United States, Appellant v. Collin & Gissel (Ludwig Baer), Appellee, No. 4312" reversing the judgment of the United States Customs Court, Third Division, which affirmed the judgment of Judge Dallinger

of the United States Customs Court. A certified transcript of the record in the case, with the necessary additional copies thereof, has been filed in compliance with Rules 38 and 42 of the rules of this court.

Jurisdiction.

The judgment below was entered June 9, 1941.

The jurisdiction of this court is invoked under Section 195 of the Judicial Code, as amended by the Act of June 17, 1930, c. 497, Title IV, § 647, 46 Stat. 762 (28 U. S. C. A. § 308).

Summary and Short Statement.

The petitioner imported a certain beer barrel washing machine at the Port of Houston, Texas. The United States Appraiser at that port appraised the machine on the basis of its alleged cost of production in accordance with Section 402 (f) of the Tariff Act of 1930 (19 U. S. C. A. § 1402 (f)). The trial judge held, and his judgment was affirmed by the Appellate Term of the United States Customs Court, that neither foreign value nor export value existed for the machine, but that United States value, as defined in Section 402 (e) of the Tariff Act of 1930 (19 U. S. C. A. § 1402 (e)), was the proper dutiable basis of appraisement.

It was agreed by and between counsel before the United States Court of Customs and Patent Appeals that there was neither foreign value nor export value for the imported merchandise, and that if United States value existed, as found by the United States Customs Court, it was the proper basis of appraisement in accordance with Section 402 (a) (2) of the Tariff Act of 1930 (19 U. S. C. A. § 1402 (a) (2)).

Section 402 (f) of the Tariff Act of 1930 (19 U. S. C. A. § 1402) reads as follows:

"SEC. 402. VALUE.

(a) *Basis.*—For the purposes of this Act the value of imported merchandise shall be—

(1) The foreign value or the export value, whichever is higher;

(2) If the appraiser determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value;

(3) If the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;

(4) In the case of an article with respect to which there is in effect under section 336 a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article.

(b) *Review of Appraiser's Decision*—A decision of the appraiser that foreign value, export value, or United States value can not be satisfactorily ascertained shall be subject to review in reappraisement proceedings under Section 501; but in any such proceeding, an affidavit executed outside of the United States shall not be admitted in evidence if executed by any person who fails to permit a Treasury attaché to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise.

(c) *Foreign Value*—The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(d) *Export Value*—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(e) *United States Value*—The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per centum, if any has been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 per centum and a reasonable allowance for general expenses, not to exceed 8 per centum on purchased goods.

(f) *Cost of Production*—For the purpose of this title the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;

(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

(g) *American Selling Price*—The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely offered for sale to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article."

During the year of importation of the instant machine, the petitioner imported and sold some 21 similar machines. The record shows that at all times during the year the petitioner freely offered such machines for sale to all purchasers in the United States (R. 9, 19-20). It also appears that upon the date of exportation of the machine in question, July 11, 1934, no such or similar imported machine was held in stock in the United States.

The United States Court of Customs and Patent Appeals held that inasmuch as there was no such or similar machine, imported into the United States previous to the date of exportation of the involved machine, which was being freely offered for sale at such time (all previously imported machines having been already sold), there was no basis upon which United States value could be determined.

It was the contention of the importer before that court, and it is here the single claim of the petitioner, that the word "imported" in the statutory definition of United States value does not require that a stock of such or similar imported merchandise be maintained in the United States at the date of exportation of the merchandise to be appraised, in order for United States value to exist, but that it is sufficient if such imported merchandise, as contrasted with domestic merchandise, has been freely sold and was being freely offered for sale to all purchasers in the United States as of the date of exportation of the involved merchandise.

Question Presented.

The sole question is:

Whether in the statutory definition of United States value the word "imported" as used in the clause "the price at which such or similar imported merchandise is freely offered for sale" is used to differentiate from "domestic", or means physically imported and present in the United States.

Reasons for Granting the Writ.

1. The United States Court of Customs and Patent Appeals has decided an important question of Federal law which has not been, but should be, settled by this court. Its decision so limits the applicability of United States value as a basis of appraisement of imported merchandise,

contrary to the probable intent of the Congress, as practically to destroy its use.

2. If the construction placed by the United States Court of Customs and Patent Appeals upon the statutory definition of United States value is permitted to stand as correct, the Government officials appraising merchandise will have great difficulty in determining the existence or nonexistence of United States value, to the probable detriment of the revenue; importers of merchandise will find it practically impossible to determine whether or not their importations can be entered on the basis of United States value; and the great majority of merchandise which has heretofore been appraised on the basis of United States value must be appraised on the basis of cost of production in the foreign country, which basis is the most difficult of all to ascertain with any degree of accuracy, and which was considered by the Congress as the least satisfactory method for valuation of imported merchandise, only to be used as a last resort.

WHEREFORE, your petitioner prays that a writ of certiorari issue to the United States Court of Customs and Patent Appeals, commanding said court to certify and send to this Court on a day to be designated, a full and complete transcript of the record of all proceedings of the Court of Customs and Patent Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court; that the judgment of the Court of Customs and Patent Appeals be reversed; and that the judgment of the United States Customs Court be affirmed and reinstated.

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